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SERVICE DATE – APRIL 28, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 175X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN
HAMILTON COUNTY, IA

Decided: April 27, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its Ellsworth Industrial Lead, a 3.2-mile line of railroad, between milepost 0.0, near Jewell, and milepost 3.2, at Ellsworth, in Hamilton County, IA. Notice of the exemption was served on March 29, 2006, and published in the Federal Register on April 4, 2006 (71 FR 16855-56). The exemption is scheduled to become effective on April 28, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in the proceeding on April 3, 2006, setting forth environmental concerns and recommending that conditions be imposed on any decision granting abandonment authority. In the EA, SEA notes that the U.S. Army Corps of Engineers (Corps) indicated that the proposed abandonment will not require a permit under section 404 of the Clean Water Act, 33 U.S.C. 1344, but requests that, in the event the proposed project involves the removal of bridges, UP be required to: (1) remove all fill material to an upland, non-wetland site; (2) remove all pilings to at least one foot below streambed elevations; (3) seed all disturbed areas with native grasses; and (4) take measures to ensure that sediments are not introduced into waters of the United States. Accordingly, SEA recommended that UP be required to comply with the Corps' recommendations.

SEA also notes in the EA that the Iowa State Historic Preservation Office (SHPO) has not completed its evaluation of the potential impact of this project on historic resources. Accordingly, SEA recommended that UP be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA further recommended that UP be required to report back to SEA regarding any consultation with the SHPO or any other party consulted during the section 106 process.

Comments to the EA were due April 18, 2006. No comments to the EA were received. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

On April 12, 2006, the Iowa Trails Council (Council) filed a request of issuance of a public use condition under 49 U.S.C. 10905 for 180 days.¹ See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. See 49 CFR 1152.28(a)(2). Because the Council has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the April 28, 2006 effective date of the exemption.

We note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to negotiate to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the Council, but may engage in negotiations with other interested persons.

Based on SEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served on March 29, 2006, and published in the Federal Register on April 4, 2006, exempting the abandonment of the line described above, is modified to the extent necessary to permit public use negotiations as set forth below, for a period of 180 days commencing from the April 28, 2006 effective date of the exemption (until October 25, 2006), and is subject to the conditions that UP shall: (1) in the event the proposed project involves the removal of bridges, remove all fill material to an upland, non-wetland site; remove all pilings to at least one foot below streambed elevations; seed all disturbed areas with native grasses; and take measures to ensure that sediments are not introduced into waters of the United States and (2) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are

¹ In the April 12, 2006 filing, the Council, on behalf of itself and the Hamilton County Conservation Board, also requested the issuance of a notice of interim trail use for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. The Board will address that request in a later decision.

listed in the National Register until completion of the section 106 process of the NHPA, and report back to SEA regarding any consultation with the SHPO or any other party consulted during the section 106 process.

3. Consistent with the public use condition imposed in this decision, UP may discontinue service and salvage track and related materials. UP shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary